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United States District Court
Central District of California

KEVIN A. ALFARO,

11 Plaintiff,

12 v.

13 DELTA AIR LINES, INC.,

14 Defendant.

Case № 2:22-cv-04222-ODW (AGRx)

**ORDER DISMISSING TRESPASS
TO CHATTEL CLAIM; ORDER
DISMISSING CASE FOR LACK OF
SUBJECT MATTER JURISDICTION**

I. INTRODUCTION

On June 21, 2022, Plaintiff Kevin A. Alfaro filed this action in federal court against Defendant Delta Air Lines, Inc. to recover for damage to luggage and for expenses arising from a cancelled flight. (Compl., ECF No. 1.) The Court ordered Alfaro to show cause regarding (1) the sufficiency of his claims, and (2) why the Court should not dismiss the action for lack of subject matter jurisdiction. (Second Order Show Cause (“Second OSC”), ECF No. 38.) For the reasons discussed below, the Court finds that Alfaro fails to sufficiently plead a claim for trespass to chattel and **DISMISSES** that claim. The Court further finds that Alfaro fails to establish subject matter jurisdiction and **DISMISSES** the action.

1 II. BACKGROUND

2 In determining whether Alfaro sufficiently states a trespass to chattel claim, the
 3 Court takes Alfaro’s well-pleaded factual allegations as true. *Lee v. City of Los*
 4 *Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). Similarly, the Court assumes Alfaro’s
 5 well-pleaded factual allegations to be true for the purpose of the facial inquiry into
 6 subject matter jurisdiction. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

7 On February 28, 2022, Alfaro purchased from Delta a non-stop first-class ticket
 8 for a May 21, 2022 flight from Tampa, Florida to Los Angeles International Airport
 9 (“LAX”). (First Am. Compl. (“FAC”) ¶¶ 13, 15, ECF No. 37.) The flight was
 10 cancelled. (*Id.* ¶ 14.) Alfaro contacted Delta customer support, and Delta rebooked
 11 his flight for the following day. (*Id.* ¶¶ 14–15.) Alfaro stayed overnight at a nearby
 12 hotel before checking two pieces of luggage and boarding his flight to LAX on May
 13 22, 2022. (*Id.* ¶¶ 16–17.) Rather than flying directly to LAX, Alfaro’s route took him
 14 through the Atlanta and Sacramento airports before arriving at LAX. (*Id.* ¶ 15.)

15 Upon arriving at LAX, Alfaro found that one piece of his luggage was severely
 16 damaged. (*Id.* ¶ 19.) He filed a claim with Delta’s baggage service agents at LAX,
 17 and Delta offered to replace the damaged luggage through a website link that Delta
 18 would provide within forty-eight hours. (*Id.* ¶¶ 20–21.) Once he returned home,
 19 Alfaro also discovered that some of his personal property had been stolen from the
 20 luggage. (*Id.* ¶ 23.) Alfaro did not receive a website link as promised, and
 21 accordingly, he emailed photos of the damaged luggage and other claim information
 22 to Delta’s CEO. (*Id.* ¶¶ 22, 24–25.) A Delta claims manager responded with a “form
 23 letter” requesting photos and claim information. (*Id.* ¶¶ 26–27.) A few days later,
 24 Alfaro again emailed the CEO regarding his concerns and received no response. (*Id.*
 25 ¶¶ 29–30.)

26 In his initial Complaint, Alfaro brought claims for breach of contract and
 27 conversion against Delta. (See Compl. ¶¶ 30–43.) On October 12, 2022, the Court
 28 ordered Alfaro to show cause why (1) his conversion claim should not be dismissed as

1 insufficiently pleaded, and (2) the action should not be dismissed for lack of subject
 2 matter jurisdiction. (First Order Show Cause (“First OSC”), ECF No. 35.) As part of
 3 the First OSC, the Court provided Alfaro leave to amend his conversion claim. (*Id.*
 4 at 3.)

5 Alfaro availed himself of this leave and filed a First Amended Complaint,
 6 substituting the original conversion claim with a new trespass to chattel claim. (FAC
 7 ¶¶ 40–43.) The Court then ordered Alfaro to show cause as to the same two points:
 8 (1) the sufficiency of his trespass to chattel claim, and (2) the existence of subject
 9 matter jurisdiction. (Second OSC.) Alfaro filed a Response to the Second OSC on
 10 November 2, 2022. (Pl.’s Resp. Second OSC (“Resp.” or “Response”), ECF No. 40.)

11 III. LEGAL STANDARD

12 A. Failure to State a Claim

13 A trial court may dismiss a claim *sua sponte* under Federal Rule of Civil
 14 Procedure (“Rule”) 12(b)(6). *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991
 15 (9th Cir. 1987) (citing *Wong v. Bell*, 642 F.2d 359, 361–62 (9th Cir. 1981)). Unless it
 16 is apparent that the plaintiff “cannot possibly win relief,” *sua sponte* dismissal is
 17 appropriate only after providing the parties an opportunity to be heard. *Wong*,
 18 642 F.3d at 361–62.

19 Under Rule 12(b)(6), a court may dismiss a claim based on the lack of a
 20 cognizable legal theory or the absence of sufficient factual allegations under such a
 21 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). To
 22 survive dismissal, a complaint need only satisfy “the minimal notice pleading
 23 requirements of Rule 8(a)(2)”—“a short and plain statement of the claim.” *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003) (citing Fed. R. Civ. P. 8(a)(2)). However,
 24 the “[f]actual allegations must be enough to raise a right to relief above the speculative
 25 level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Accordingly, the
 26 complaint must “contain sufficient factual matter, accepted as true, to state a claim to
 27

1 relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
 2 (internal quotation marks omitted).

3 The determination of whether a complaint satisfies the plausibility standard is a
 4 “context-specific task that requires the reviewing court to draw on its judicial
 5 experience and common sense.” *Iqbal*, 556 U.S. at 679. In making its determination,
 6 a court is generally limited to the pleadings and must construe “[a]ll factual
 7 allegations set forth in the complaint . . . as true and . . . in the light most favorable” to
 8 the plaintiff. *Lee*, 250 F.3d at 679 (internal quotation marks omitted) (quoting *Epstein*
 9 *v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996)). Although a court must
 10 view these allegations in the light most favorable to the plaintiff, it is not required to
 11 blindly accept “allegations that are merely conclusory, unwarranted deductions of fact,
 12 or unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988
 13 (9th Cir. 2001).

14 **B. Subject Matter Jurisdiction**

15 Federal courts have subject matter jurisdiction only as authorized by the
 16 Constitution and Congress. U.S. Const. art. III, § 2, cl. 1; *Kokkonen v. Guardian Life*
 17 *Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts have original jurisdiction
 18 over actions that arise under federal law. 28 U.S.C. § 1331. An action arises “under
 19 federal law within the meaning of § 1331” if a well-pleaded complaint establishes
 20 “either that federal law creates the cause of action or that the plaintiff’s right to relief
 21 necessarily depends on resolution of a substantial question of federal law.” *Empire*
 22 *Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 689–90 (2006) (internal
 23 quotation marks omitted) (quoting *Franchise Tax Bd. of Cal. v. Constr. Laborers*
 24 *Vacation Tr. for S. Cal.*, 463 U.S. 1, 27–28 (1983)).

25 Federal courts also have an independent obligation to determine whether
 26 subject matter jurisdiction exists, “even when no party challenges it.” *Hertz Corp. v.*
 27 *Friend*, 559 U.S. 77, 94 (2010). If a court determines at any time that no basis for
 28

1 subject matter jurisdiction exists, then it must dismiss the action. Fed. R. Civ.
 2 P. 12(h)(3).

3 **IV. DISCUSSION**

4 Alfaro fails to sufficiently respond to the Court’s Second OSC regarding the
 5 legal sufficiency of his trespass to chattel claim, and accordingly, the Court dismisses
 6 his trespass to chattel claim pursuant to Rule 12(b)(6). The Court further finds that
 7 Alfaro fails to demonstrate this Court’s subject matter jurisdiction over this action.

8 **A. Failure to State a Claim**

9 Alfaro brings a trespass to chattel claim against Delta, alleging that Alfaro
 10 owned or had a right to possess “monies or property” that Delta unlawfully took.
 11 (FAC ¶ 41.) In the Second OSC, the Court expressly set forth the reason why
 12 Alfaro’s trespass to chattel claim appeared insufficient under the pleading
 13 requirements set forth in *Twombly* and *Iqbal* and ordered Alfaro to show cause why
 14 the claim should not be dismissed. (See Second OSC 1.) In his Second OSC
 15 Response, Alfaro makes no attempt whatsoever to defend his trespass to chattel claim,
 16 effectively ignoring the Court’s directive on the issue. Based on Alfaro’s failure to
 17 provide a response to the concerns expressly set forth in the Court’s Second OSC, the
 18 Court finds it appropriate to dismiss the trespass to chattel claim pursuant to Rule
 19 12(b)(6).

20 The Court’s own analysis confirms that Alfaro fails to allege sufficient facts in
 21 support of his trespass to chattel claim. (See FAC ¶¶ 40–43.) Under California law,
 22 “trespass to a chattel may be committed by intentionally (a) dispossessing another of
 23 the chattel, or (b) using or intermeddling with a chattel in the possession of another.”
 24 *Variant Displays, Inc. v. Absolute Exhibits, Inc.*, 8:15-cv-01685-CJC (JCGx),
 25 2016 WL 7486282, at *2 (C.D. Cal. May 31, 2016) (quoting *Jamgotchian v. Slender*,
 26 170 Cal. App. 4th 1384, 1400–01 (2009)).

27 Here, Alfaro ambiguously alleges that he owned “monies or property” that
 28 Delta wrongfully took for its personal use. (*Id.* ¶¶ 41–42.) This allegation, like the

1 remaining allegations found under the trespass to chattel claim, is boilerplate and
 2 conclusory, and is not tethered to any well-pleaded factual allegation. For example, it
 3 is not clear whether “monies or property” refers to the cost of the ticket or Alfaro’s
 4 luggage or both. If the answer is luggage, Alfaro further fails to specify whether he is
 5 referring to damage to the luggage or loss of personal property (and if so, what
 6 personal property in particular). The result is that Alfaro’s FAC fails to provide Delta
 7 with notice of the nature of the claim, and his allegations do not raise his right to relief
 8 above the speculative level as required to survive dismissal. *Iqbal*, 556 U.S. at 678;
 9 *Twombly*, 550 U.S. at 557.

10 Alfaro’s failure to cure these deficiencies in the face of multiple opportunities
 11 to do so confirms for the Court that dismissing this claim is the appropriate action.
 12 Thus, the Court dismisses Alfaro’s trespass to chattel claim, leaving the breach of
 13 contract claim as the sole remaining claim at issue.

14 **B. Subject Matter Jurisdiction**

15 Alfaro alleges this Court has subject matter jurisdiction over his breach of
 16 contract claim based on the preemptive force of 49 U.S.C. § 41713. (FAC ¶ 1.) In the
 17 alternative, he argues that the Court has subject matter jurisdiction because his breach
 18 of contract claim arises under or presents a substantial question of federal law in that
 19 Delta violated several federal regulations in connection with its breach of contract.
 20 (See generally Resp.) The Court disagrees with both contentions.

21 *1. The ADA does not preempt Alfaro’s contract claim.*

22 At first, Alfaro alleged and argued that § 41713, a part of the Airline
 23 Deregulation Act of 1978 (“ADA”), provides federal courts with “sole”—that is,
 24 exclusive—jurisdiction over his claims.¹ (See Compl. ¶¶ 1–2; see also Mot. Strike
 25 Answer 4, ECF No. 14.) However, § 41713 merely provides that federal law
 26 preempts state laws related to the “price, route, or service of an air carrier.” See

27 ¹ Alfaro appears to have retreated from this assertion, apparently conceding that there is no exclusive
 28 jurisdiction in acknowledging that “there may well be an argument under Wolens that California
 state courts have concurrent jurisdiction.” (Resp. 2.)

1 49 U.S.C. § 41713. And while the fact that a state-law claim is preempted by federal
 2 law generally provides courts with federal question jurisdiction over the claim, *see*
 3 *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463
 4 U.S. 1, 23 (1983), the preemption mechanism of § 41713 does not, either on its face or
 5 by implication, confer federal courts with *exclusive* jurisdiction over any claims.

6 Not only does 49 U.S.C. § 41713 fail to provide a basis for exclusive
 7 jurisdiction; it fails to provide a basis for subject matter jurisdiction whatsoever,
 8 because Alfaro's breach of contract claim is not preempted by § 41713 or any other
 9 part of the ADA. Although the Supreme Court broadly interpreted the ADA to
 10 preempt any state law claim that has a connection with airline "rates, routes, or
 11 services," *see Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992), the
 12 Court also recognized that the breach of "privately ordered obligations" between
 13 airlines and customers falls outside the ADA's preemption, *Am. Airlines, Inc. v.*
 14 *Wolens*, 513 U.S. 219, 228–29 (1995). In other words, the ADA's preemption does
 15 not prevent states "from affording relief to a party who claims and proves that an
 16 airline dishonored a term the airline itself stipulated." *Id.* at 232–33; *see Hickcox-*
 17 *Huffman v. US Airways, Inc.*, 855 F.3d 1057, 1062 (9th Cir. 2017) ("States may not
 18 impose their own rules regarding fares, routes, or services, but may afford relief for
 19 breaches of obligations the airlines voluntarily undertook themselves, even when the
 20 obligations directly relate to fares, routes, and services."). Thus, the ADA does not
 21 preempt a state-law contract claim (and federal question jurisdiction does not lie)
 22 where the claim merely seeks a "remedy confined to a contract's terms [that] simply
 23 holds parties to their agreements." *Wolens*, 513 U.S. at 229; *see Nw., Inc. v. Ginsberg*,
 24 572 U.S. 273, 284 (2014).

25 Here, Alfaro's claim concerns alleged breaches of the carriage contract that
 26 governs his agreement with Delta. (FAC ¶¶ 31–39.) This is no more and no less than
 27 a breach of contract claim based on the "privately ordered obligations" of the parties.
 28 *Wolens*, 513 U.S. at 228–29. Accordingly, the ADA does not preempt Alfaro's breach

1 of contract claim. This means that federal preemption does not provide the Court with
 2 federal question jurisdiction in this case.

3 2. *Alfaro's contract claim neither arises under nor presents a substantial
 4 question of federal law.*

5 More broadly, Alfaro's breach of contract claim neither arises under nor
 6 presents a substantial question of federal law because "state law claims that simply
 7 'center[] upon the contract and its construction rather than the [federal] statutory basis
 8 for the contract' do not present federal questions." *Osceola Blackwood Ivory Gaming
 9 Grp., LLC v. Picayune Rancheria of Chukchansi Indians*, 272 F. Supp. 3d 1205, 1215
 10 (E.D. Cal. 2017) (quoting *Littell v. Nakai*, 344 F.2d 486, 487–88 (9th Cir. 1965)).
 11 Although Alfaro argues that Delta violated several federal regulations, the contract
 12 claim Alfaro asserts in his First Amended Complaint is not based on federal
 13 regulations but instead is based on the common law, and Alfaro fails to otherwise
 14 demonstrate that his breach of contract claim presents substantial questions of federal
 15 law. (See Resp.)

16 By his argument, Alfaro suggests that a breach of contract case raises a federal
 17 question merely because a party violated federal regulations in the breaching of the
 18 contract. (See *id.*) But this argument runs counter to the principle that, in determining
 19 if federal question jurisdiction exists, the plaintiff is the "master of his complaint" and
 20 may choose to include or omit causes of action based on federal law. *Newtok Vill. v.
 21 Patrick*, 21 F.4th 608, 616 (9th Cir. 2021). Here, Alfaro has chosen to assert a
 22 common law cause of action arising under state law; Alfaro does not assert causes of
 23 action based on federal regulations. And "mere reference of a federal statute in a
 24 pleading"—or, as here, an OSC response—"will not convert a state law claim into a
 25 federal cause of action if the federal statute is not a necessary element of the state law
 26 claim and no preemption exists." *Id.* (quoting *Easton v. Crossland Mortg. Corp.*,
 27 114 F.3d 979, 982 (9th Cir. 1997) (per curiam)). Consequently, the Court finds that
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1 Alfaro fails to demonstrate that this Court has federal question jurisdiction over
2 Alfaro's breach of contract claim.

3 Alfaro fails to establish that this court has subject matter jurisdiction over this
4 action, and the Court therefore dismisses the case.

5 **C. Character of Dismissal: Without Leave to Amend and Without Prejudice**

6 The Court has already provided Alfaro with opportunities amend his pleadings,
7 both to invoke a federal question and to state valid claims. (See First OSC; Second
8 OSC.) Moreover, Alfaro does not currently request leave to amend, nor does he
9 propose any further allegations that would either cure his trespass to chattel claim or
10 provide this Court with subject matter jurisdiction. (See generally Resp.)

11 “The district court’s discretion to deny leave to amend is particularly broad
12 where plaintiff has previously amended the complaint.” *Allen v. City of Beverly Hills*,
13 911 F.2d 367, 373 (9th Cir. 1990) (quoting *Ascon Props., Inc. v. Mobil Oil Co.*,
14 866 F.2d 1149, 1160 (9th Cir. 1989)). Here, given the unique procedural posture of
15 this case, it is appropriate to dismiss the trespass to chattel claim without leave to
16 amend and without prejudice. As to subject matter jurisdiction, it is also appropriate
17 to dismiss the First Amended Complaint without leave to amend the jurisdictional
18 allegations and without prejudice to filing this case in state court. This disposition
19 provides Alfaro with the opportunity to re-plead the trespass to chattel claim should he
20 choose to re-file his case in state court, and it also prevents him from re-asserting any
21 claim before this Court, where Alfaro has failed to demonstrate the Court’s subject
22 matter jurisdiction over the case.

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V. CONCLUSION

2 For these reasons, the Court **DISMISSES** Alfaro's trespass to chattel claim
3 pursuant to Rule 12(b)(6), **without leave to amend and without prejudice**.
4 Moreover, the Court **DISMISSES** the entire action **WITHOUT PREJUDICE** for
5 lack of subject matter jurisdiction. All dates and deadlines are **VACATED**. The
6 Clerk of the Court shall close the case.

IT IS SO ORDERED.

December 9, 2022

**OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE**